IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1121/2005

Reserved on.31.7.2007

Decided on. August 6, 2007

State of H.P. & others. **…Petitioner.**

Versus

Hem Raj & another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioners : Mr. M.S. Chandel, Advocate General with Ms. Meenakashi Sharma, Deputy Advocate General.

For the respondent: Mr. Vinod Thakur, Advocate for the respondent No.1

Rajiv Sharma, J.

A challenge has been laid to the award dated 21.7.2005 passed by the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala camp at Mandi in reference No. 1/2004.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala camp at Mandi:

> **"Whether the termination of services of Shri Hem Raj son of Sh. Gopal Chand, daily wages Beldar by the Executive Engineer, IPH Division Sundernagar, District Mandi, H.P. w.e.f. 16.11.2000 without complying the provisions of the Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled for?**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

In sequel to the reference made by the State Government, the respondent (hereinafter referred to as the 'workman' for convenience sake) had filed statement of claim before the Labour Court. The workman had primarily contended before the Labour Court that the employer had been giving artificial breaks to prevent him from completing 240 days and he had been retrenched without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereafter referred to as the 'Act'). The employer had resisted the claim filed by the workman. The Labour Court on the basis of the oral as well as documentary evidence led by the parties had answered the reference in affirmative. The Labour Court had directed the re-instatement of the workman and had also granted him consequential benefits of seniority and back wages to the extent of 50%.

The learned Advocate General had strenuously argued that the findings recorded by the Labour Court that the workman will be deemed to have completed 240 days is erroneous and liable to be interfered by the Court. He had also contended that the alleged retrenchment is dated 16.11.2000 but the reference has been made by the State Government in the year 2004.

Mr. Vinod Thakur, Advocate had supported the award dated 21.7.2005 passed by the Labour Court.

I have heard the learned counsel for the parties and perused the record.

The workman was engaged on muster roll basis with effect from 1st August, 1998. He had completed 182 days preceding his retrenchment as per the man-days chart annexed with the petition. The workman had thus not completed 240 days preceding 12 calendar months on the date of his retrenchment i.e. 16.11.2000.

The workman appeared as PW-1 before the Labour Court and had testified that the employer was giving artificial breaks to him with the intention to prevent him from completing 240 days. He had also stated that the workman junior to him i.e. Sh. Tek Singh son of Sh. Maya was retained while retrenching him on 16.11.2000. Sh. Rakesh Rana, Assistant Engineer, IPH, Sub Division, Thunag, District Mandi had appeared as RW-1 for the employer. He had admitted in his statement that some of the persons junior to the workman were still working and the Department was running 16-17 developmental schemes at the relevant time and it was receiving the funds for these schemes. He had though denied in his cross-examination that the artificial breaks were given to the workman. Mr. Rakesh Rana had also testified before the Labour Court that the scheme, where the workman was engaged, was closed due to snow fall.

The Labour Court had come to the wrong conclusion that the workman had been prevented from completing 240 days by giving fictional breaks and if the fictional breaks had not been given, he could have completed 240 days.

As far as the issue of the principle of 'last come first go' as invoked by the workman before the Labour Court is concerned, the same needs close scrutiny of the Court. The workman while appearing as PW-1 had testified that Sh. Tek Singh son of Sh. Maya was retained, who was junior to him at the time of his retrenchment i.e. 16.11.2000. RW-1, Rakesh Rana had admitted in his statement that the workman junior to the respondent was retained while retrenching him on 16.11.2000. In view of this evidence the workman was entitled to get the protection of 25 G of the Act even though he had not completed 240 days preceding his retrenchment on 16.11.2000.

The Hon'ble Supreme Court in ***Central Bank of India Versus S.Satyam and others,*** (1996) 5 SCC 419 has held that to get the protection of section 25 G as well as section 25 H of the Act, the workman need not complete 240 days. Their Lordships have held as under:

> **"The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of 'retrenchment' given in section 2 (oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman…who has been in continuous service for not less than one year". Thus, section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman…who has been in continuous service for not less than one year:. It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."**

The Apex Court has held in ***Samishta Dube Versus City Board, Etawah and another***, 1999 (2) SLR 51 that the principle of last come first go should ordinarily be followed even in the case of daily wagers unless for reasons to be recorded the employer retrenches any other person. Their Lordships of the Supreme Court have held as under:

"We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court be treated as valid. Section 6-P of the U.P. Act (which correspondents to Section 25 G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf – the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6 (N) (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh vs. Presiding Officer (1996 Suppl. SCC 679) in a matter which arise under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India vs. S. Satyam and others 1996 (5) SCC 419): [1996(4) SLR (SC)].

Nor was the High Court correct in stating that no rule of seniority was applicable to daily wagers. There is no such restriction in Section 6P of the U.P. Act read with Section 2(z) of the U.P. Act which defines 'workman'.

It is true that the rule of 'first come, last go' in Section 6-P could be deviated from by an employer because the section uses the word 'ordinarily'. It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or less of confidence etc. as held in M/s Swadesmitran Limited, Madras vs. Their Workmen (1960 (3) SCR 144). But the burden will then on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act."

The workman was retrenched on 16.11.2000 and he approached the Labour Officer-cum-Conciliation Officer on 1.4.2002. The Labour Officer-cum-Conciliation Officer made the failure report to the State Government on 17.3.2003 and the dispute was referred to the Labour Court by the State Government on 2.1.2004. In view of these facts there was no inordinate delay in approaching the Labour Court by the workman. Thus, the submission of the Learned Advocate General that there was inordinate delay in approaching the Labour Court is untenable.

The upshot of the above discussion is that:

i) **the Labour Court had recorded the wrong findings that the workman had completed 240 days preceding his retrenchment i.e. 16.11.2000;**

ii) **the workman junior to the respondent was retained by the employer while retrenching him on 16.11.2000, thus, violating the provisions of section 25-G of the Act;**

iii) **the workman is entitled to re-instatement but without only 50% back wages.**

Accordingly the writ petition is disposed of by modifying the award dated 21.7.2005 in the following manner:

The findings recorded by the Labour Court that the workman had completed 240 days and thus is entitled to protection of 25-F of the Act are set aside. However, the workman is held entitled to re-instatement with 50% back wages and consequential benefits including seniority since the workman junior to him was retained at the time of his retrenchment on 16.11.2000. The workman is also held entitled to costs which are quantified at Rs. 1000/-.

(Rajiv Sharma), Judge

August 6, 2007
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